

REMARKS

In response to the non-final Office Action dated October 12, 2004, the Applicants respectfully request reconsideration based on the above amendments and the following remarks.

The Office rejected claims 1, 4-11, 14-17, and 20 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,884,202 to Arjomand. Claim 2 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of U.S. Patent 6,362,720 to Razavi *et al.* Claims 12 and 18-19 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of “official notice.” Claims 3 and 13 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of U.S. Patent 6,351,221 to Phillips *et al.* The Applicants show, however, that the amended claims are not anticipated, nor obviated, by the cited prior art. The Applicants, then, respectively submit that the pending claims are ready for allowance.

Information Disclosure Statement

The Applicants submit an Information Disclosure Statement. This Information Disclosure Statement lists additional patents believed relevant beyond the cited art. The Applicants, then, respectively submit that the pending claims distinguish over all these prior art documents. The Applicants also enclose a check for \$180.

Rejection of Claims Under 35 U.S.C. § 102

The Office rejected claims 1, 4-11, 14-17, and 20 under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 5,884,202 to Arjomand. A claim is anticipated only if each and every element is found in a single prior art reference. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q. 2d (BNA) 1051, 1053 (Fed. Cir. 1987). *See also* DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2131 (orig. 8th Edition) (hereinafter “M.P.E.P.”). As the Applicants show, however, amended claims 1, 4-11,

14-17, and 20 all include features not disclosed by *Arjomand*. The patent to *Arjomand*, for example, does not disclose “receiving a signal indicative of an output of an accelerometer at an electronic control module.” *Arjomand* also fails to describe “receiving an instruction from the electronic control module to wirelessly communicate the diagnostic message.” Moreover, all the pending claims include the feature “wirelessly communicating the diagnostic message to a manufacturer of the vehicle.”

Because *Arjomand* fails to describe all these features, the reference to *Arjomand* cannot anticipate claims 1, 4-11, 14-17, and 20. The Applicants respectfully request removal of the § 102 rejection of these claims.

Rejection of Claims Under 35 U.S.C. § 103

Claim 2 was rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of U.S. Patent 6,362,720 to Razavi *et al.* Claims 12 and 18-19 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of “official notice.” Claims 3 and 13 were rejected under 35 U.S.C. § 103 (a) as being unpatentable over *Arjomand* in view of U.S. Patent 6,351,221 to Phillips *et al.* If the Office wishes to establish a *prima facie* case of obviousness, three criteria must be met: 1) combining prior art requires “some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill”; 2) there must be a reasonable expectation of success; and 3) all the claimed limitations must be taught or suggested by the prior art. DEPARTMENT OF COMMERCE, MANUAL OF PATENT EXAMINING PROCEDURE, § 2143 (orig. 8th Edition) (hereinafter “M.P.E.P.”). As the Applicants show, however, the amended claims are not obvious in light of any combination of *Arjomand*, Razavi, Phillips, and/or “official notice.” The Applicants, then, respectfully request allowance of these claims.

The pending claims are not obvious in view of the cited prior art. The pending claims all include many features not taught or suggested by any combination of *Arjomand*, Razavi, Phillips, and/or “official notice.” Neither *Arjomand*, Razavi, Phillips teaches or suggests “receiving a signal indicative of an output of an accelerometer at an electronic control module” or “receiving

an instruction from the electronic control module to wirelessly communicate the diagnostic message.” Moreover, all the pending claims include the feature “*wirelessly communicating the diagnostic message to a manufacturer of the vehicle.*” Because the cited prior art fails to teach or suggest any of these claimed features, one of ordinary skill in the art would not have thought it obvious to combine and/or modify *Arjomand*, *Razavi*, and/or *Phillips* to obviate the pending claims. The *prima facie* case must fail, so the applicants respectfully ask Examiner Nguyen to remove the § 103 rejections.

Additional Prior Art in IDS

The pending claims also distinguish over the patents cited in the Information Disclosure Statement. The Applicants, as earlier mentioned, herewith submit an Information Disclosure Statement. The Applicants respectfully submit that the pending claims distinguish over all the patents listed in this Information Disclosure Statement. All the pending claims, for example, include the feature “*wirelessly communicating the diagnostic message to a manufacturer of the vehicle.*” None of the listed prior art patents, including the cited references to *Arjomand*, *Razavi*, and *Phillips*, disclose wirelessly transmitting diagnostic messages to a manufacturer of the vehicle. The Applicants, then, respectively submit that the pending claims distinguish over all these prior art documents.

If any issues remain outstanding, the Office is requested to contact the undersigned at (919) 387-6907 or scott@scottzimmerman.com.

Respectfully submitted,



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